

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

MICHAEL ANTHONY ABELS,

Plaintiff,

v.

HAROLD CLARKE, *et al.*,

Defendants.

Case No. C07-5303 RBL/KLS

ORDER DIRECTING PLAINTIFF  
TO PROVIDE SERVICE COPIES  
AND FORMS, STRIKING  
DEFENDANTS' MOTION TO  
DISMISS AND DENYING  
PLAINTIFF'S MOTION FOR  
EVIDENTIARY HEARING

Before the Court is Plaintiff's response to this Court's Order to Show Cause (Dkt. # 25), Plaintiff's proposed Amended Complaint (Dkt. # 27), and Plaintiff's motion for evidentiary hearing (Dkt. # 24). Having reviewed Plaintiff's response and motion, and Defendant's opposition to the motion for evidentiary hearing ((Dkt. # 26), the Court finds that Plaintiff's Amended Complaint is acceptable, but that the motion for evidentiary hearing should be denied.

**PROCEDURAL BACKGROUND**

On July 3, 2007, Plaintiff's Complaint against Defendants Clarke, Skipworth, and Hill was filed. (Dkt. # 5). Plaintiff claims that Defendants failed to provide him with medical care when Plaintiff was beaten by a mentally ill prisoner. (*Id.*). The Court ordered service of the complaint on Defendants. (Dkt. # 6). On July 19, 2007, Plaintiff filed a First Amended Complaint. (Dkt. # 7). In the First Amended Complaint, Plaintiff added three defendants and claims that the Indeterminate Sentence Review Board (ISRB) wrongfully placed him in a work release program for sex offenders and for the physically and

1 mentally disabled. (*Id.*). Plaintiff also claimed that Defendants failed to provide him with medical care.  
2 (*Id.*) Finding that Plaintiff had failed to allege conduct sufficient to state a claim pursuant to § 1983 in the  
3 amended complaint, the Court ordered Plaintiff to show cause why it should not be dismissed. (Dkt. #  
4 23). The Court advised Plaintiff of the requirements for stating a claim under § 1983 and the necessity of  
5 identifying all of the parties and his causes of action as his amended complaint would supersede his  
6 original complaint. (*Id.*). Defendants' motion to dismiss (Dkt. # 17), which sought dismissal of  
7 Plaintiff's original complaint, was stayed pending resolution of the Court's order to show cause. (Dkt. #  
8 2).

### 9 DISCUSSION

10 Plaintiff was advised that, in order to properly state a claim under 42 U.S.C. § 1983, his amended  
11 complaint must include factual allegations describing how each named Defendant caused or personally  
12 participated in causing him the harm that he claims he suffered. (Dkt. # 23). Plaintiff has done so  
13 sufficiently in his amended complaint. Attached to his "Response to Defendants' Request For a Dismiss  
14 of Evidentiary Hearing," is a copy of Plaintiff's "Motion to Amend," which this Court interprets as  
15 Plaintiff's proposed Amended Complaint. In it, Plaintiff names Harold Clark, Kristen Skipworth and  
16 Norman Hill and describes how these individuals acted to violate his Eighth Amendment rights.  
17 Therefore, Plaintiff is now directed to supply necessary forms (identified in Paragraph (2) below so that  
18 the Court may direct the United States Marshall to serve the Amended Complaint and summons upon the  
19 additional defendants.

20 In his motion for an evidentiary hearing, Plaintiff states that such a hearing is necessary in order to  
21 obtain additional discovery in order to expand the record to develop his claims. (Dkt. # 24). However,  
22 such a hearing is premature at this stage in the litigation. The parties will be allowed to engage in  
23 discovery after the amended complaint has been properly served.

24 Accordingly, it is **ORDERED:**

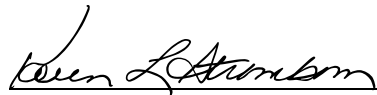
- 25 (1) The Clerk of the Court is directed to file Plaintiff's Amended Complaint (Dkt. # 26) and to  
26 send service forms to Plaintiff;
- 27 (2) Plaintiff is directed to fill out the forms with complete addresses for the additionally named  
28 defendants and return the forms with service copies of the Amended Complaint so that the

1 U.S. Marshal may attempt service by mail upon the named defendants. These documents  
2 must be returned on or before **November 30, 2007**, or the Court will recommend dismissal  
3 of this action for failure to prosecute;

4 (3) Defendants' motion to dismiss (Dkt. 17) shall be **stricken** from the docket; and

5 (4) Plaintiff's motion for evidentiary hearing (Dkt. # 24) is **DENIED**.

6  
7 DATED this 19th day of October, 2007.

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11 Karen L. Strombom  
12 United States Magistrate Judge  
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